IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

APPEAL FROM ORDER NO.252 OF 2003.
WITH
CIVIL APPLICATION NO. 424 OF 2003
WITH
CIVIL APPLICATION NO. 742 OF 2006.

Shri Arjun K. Ballani & ors. ... Appellants.
V/s.
Shri Manohar Chablani ... Respondent.

Shri G.S.Godbole with P.R. Arjunwadkar for the appellant.

Shri J.S. Chandnani for the respondent.

CORAM : A.M. KHANWILKAR, J.

DATED : 8.8.2006.

P.C. :

. Counsel for the appellants has brought to my notice that against the impugned judgment and order dated 15th September 1997, the appellants had filed an appeal before the District Court. In view of the decision of this Court in the case of **Dry Chillies Brokers Association vs. Dnyaneshwar Chamat & ors. reported in 1992 Mh.L.J. 1503,** it was contended, the remedy of appeal from order was not available. Accordingly, the appellants preferred revision application against the self same judgment and order and withdraw the appeal before the District Court. Howver, when that revision application was pending the provisions of the Civil Procedure Code came to be amended. In terms of the amendment effected in 2002, it was found that revision application was not available. Accordingly, revision came to be

withdrawn and present appeal is filed. However, having regard to the subject matter, the appeal in question will have to be pursued before the District Court. For, the valuation of the suit claim is Rs.300/- only. In these circumstances, request made by the appellant to transfer the appeal to the Court of Additional Distirct Judge, Kalyan, will have to be accepted.

2. Counsel for the respondent, however, submits that the appellants have taken advantage of their own wrong. The fact that the appellants have committed breach of the order has now been recorded by the lower Court. Moreover, during the pendency of the present proceedings, the appellants have taken advantage of the interim order by misrepresenting the authorities that they were in lawful possession of the suit property. In this backdrop, Counsel for the respondent submits that no indulgence should be shown to the appellants and appeal be dismissed. It is not disputed that the respondent had filed civil application for appropriate reliefs being Civil Application No. 742/2006 setting out the circumstances as to how appellants took advantage of the order of this Court.

3. In my opinion, all the questions including the submissions of the respondents referred to

above, will have to be considered by the appellate Court in the proceedings which would stand transferred to the file of Additional District Judge, Kalyan. The present appeal proceeding as well as civil applications filed in this appeal are directed to be transferred to the file of the Additional District Judge, Kalyan, which will be decided on its own merits in accordance with law.

4. All questions and contentions available to the respective parties will be considered by that Court and judgment will be pronounced on merits of the said contention.

5. The Additional District Judge, Kalyan, is further directed to finally decide the appeal along with incidental applications in the said appeal, as expeditiously as possible, preferably by end of October 2006, having regard to the fact that the order impugned in this appeal is passed as far back as on 15th September 1997. Parties shall appear before the Additional District Judge, Kalyan on 23rd August 2006, on which day, the said Court will fix the date for final hearing of the appeal along with incidental applications. The Additional District Judge, Kalyan, to dispose of the appeal finally within the stipulated time.

6. Registry to depute a special messenger, if

necessary, for transmitting the papers to the concerned Court.

7. It is once again made clear, as requested by Shri Godbole, that the observations made in this order may not be construed as opinion on merits of the controversy either way.

. Order accordingly.

(A.M. KHANWILKAR,J.)